

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BENNY CHEUNG; and
GUANGYING CHEUNG,

Plaintiffs,

v.

ALLSTATE VEHICLE AND
PROPERTY INSURANCE
COMPANY,

Defendant.

C22-1174 TSZ

ORDER

THIS MATTER comes before the Court on Defendant Allstate Vehicle and Property Insurance Company's motion for partial summary judgment, docket no. 18, and Plaintiffs Benny Cheung's and Guangying Cheung's cross-motion for partial summary judgment, docket no. 28. Having reviewed all papers filed in support of, and in opposition to, the cross-motions, the Court enters the following order.

Background

Prior to the events at issue in this case, Plaintiffs lived in an apartment in California. Ex. G to Parrish Decl. at 17–20 (docket no. 20-7 at 5–6). In July 2021, Plaintiffs purchased real property in Mount Vernon, Washington (the "Property").

1 Parrish Decl. at ¶¶ 2–3 (docket no. 20); Cheung Decl. at ¶ 4 (docket no. 21). Plaintiffs
2 did not have a concrete plan on when they would move to and live at the Property. See
3 Ex. G to Parrish Decl. at 33–37 (docket no. 20-7 at 9). Plaintiffs asked Ms. Cheung’s
4 cousin, who lived in Seattle, to check the Property “every few weeks.” Ex. F to Parrish
5 Decl. at 17, 36–41 (docket no. 20-6 at 5, 10–11); Ex. G to Parrish Decl. at 50–51 (docket
6 no. 20-7 at 13). Ms. Cheung’s cousin checked on the Property on at least one occasion
7 after Plaintiffs purchased the Property. Ex. F to Parrish Decl. at 17, 36–41 (docket no.
8 20-6 at 5, 10–11); Ex. G to Parrish Decl. at 50–51 (docket no. 20-7 at 13).

9 In August 2021, Plaintiffs spent one night at the Property. Ex. F to Parrish Decl.
10 at 23, 26–28 (docket no. 20-6 at 7–8); Ex. G to Parrish Decl. at 42–46 (docket no. 20-7 at
11 11–12). During this visit, Plaintiffs brought some personal items including sleeping bags,
12 clothes, and soap. Ex. G to Parrish Decl. at 42–46 (docket no. 20-7 at 11–12). Plaintiffs
13 did not return to the Property until after November 20, 2021. See Ex. G to Parrish Decl.
14 at 46 (docket no. 20-7 at 12).

15 On November 20, 2021, unidentified individuals broke into and damaged the
16 Property, taking numerous items. Parrish Decl. at ¶ 4; Cheung Decl. at ¶ 4; see also Ex.
17 C to Parrish Decl. (docket no. 20-3). That same day, Plaintiffs’ neighbor called the
18 police to report the incident. Parrish Decl. at ¶ 5; Ex. D to Parrish Decl. (docket no. 20-
19 4). A few days later, Ms. Cheung’s cousin went to the Property to view the destruction.
20 Ex. G to Parrish Decl. at 52–53 (docket no. 20-7 at 13).

21 The Property, a single-family one-story home with a detached garage, detached
22 carport, detached barn, and three sheds, was insured under a policy in effect from July 7,
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2021, through July 7, 2022 (the “Policy”), which was issued by Allstate Vehicle and Property Insurance Company (“Allstate”). Ex. A to Bonrud Decl. (docket no. 22-1 at 8). On November 24, 2021, Mr. Cheung reported the loss to Allstate and made a claim under the Policy. Parrish Decl. at ¶ 6; Cheung Decl. at ¶ 3. The “First Notice of Loss Snapshot” prepared by Allstate describes Plaintiffs’ loss as “HOUSE TO MOVE IN HAD INTERIOR STOLEN.” Ex. B to Bonrud Decl. (docket no. 22-2 at 3). In addition, the First Notice of Loss Snapshot lists the peril as “Theft - On Premises” and the sub-peril as “burglary.” Id. The First Notice of Loss Snapshot further notes that “41+” items were stolen.¹ Id. at 4.

The Policy states in part:

Dwelling Protection—Coverage A
Property WE Cover Under Coverage A:

1. **Your dwelling**, including attached structures. Structures connected to **your dwelling** by only a fence, utility line, or similar connection are not considered attached structures.
2. Construction materials and supplies at the **residence premises** for use in connection with **your dwelling**.
3. Wall to wall carpeting fastened to **your dwelling**.

....

Other Structure Protection—Coverage B
Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from **your dwelling** by clear space.
2. Structures at the address shown on the Policy Declarations connected to **your dwelling** by only a fence, utility line, or similar connection.
3. Construction materials and supplies at the **residence premises** for use in connection with structures other than **your dwelling**.

¹ Plaintiffs note numerous occasions in which Allstate or the Skagit County Sheriff described the incident at the Property as a theft. Pls.’ Mot. at 4–5 (docket no. 28).

4. Wall to wall carpeting fastened to **building structures**, other than **your dwelling**, at the address shown on the Policy Declarations.

Ex. A to Bonrud Decl. at 7 (docket no. 22-1 at 18). The Policy further states in part:

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to the property described in **Dwelling Protection–Coverage A** and **Other Structures Protection–Coverage B** except as limited or excluded in this policy.

Losses We Do Not Cover Under Coverages A and B:

Under **Dwelling Protection–Coverage A** and **Other Structures Protection–Coverage B** of this policy, we do not cover any loss caused by or resulting in any manner from any of the following excluded events as described in 1 through 26 below. Loss will be considered to have been caused by an excluded event if that event:

- (a) directly and solely results in loss; or
- (b) initiates a sequence of events that results in loss, regardless of the nature of any intermediate or final event in that sequence.

....

16. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an **insured person**.

....

24. Vandalism or malicious mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

Ex. A to Bonrud Decl. at 7–10 (docket no. 22-1 at 18–21). With respect to personal property, the Policy states in part:

Personal Property Protection–Coverage C

Property We Cover Under Coverage C:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located away from the **residence premises**, coverage is limited to 10% of **Personal Property Protection–Coverage C**.

....

Property We Do Not Cover Under Coverage C:

....

1 8. Vandalism and malicious mischief.

2 **We** do not cover vandalism or malicious mischief if **your dwelling**
3 has been vacant or unoccupied for more than 30 consecutive days
4 immediately prior to the vandalism or malicious mischief. A **dwelling**
5 under construction is not considered vacant or unoccupied.

6 Ex. A to Parrish Decl. at 10–11 (docket no. 20-1 at 16–17).

7 Upon receiving Plaintiffs’ claim, Allstate began investigating the facts of the loss.
8 Parrish Decl. at ¶ 7. Allstate’s investigation included taking photographs of the Property,
9 reviewing the Skagit County Sheriff report, reviewing purchase and sale documents, and
10 retaining a personal investigator to interview neighbors and canvas the area. Id. In
11 December 2021, Allstate retained Rory Leid, an attorney, to conduct an examination
12 under oath (“EUO”) of each Plaintiff pursuant to the terms of the Policy. Id. at ¶ 8. Leid
13 conducted the EUOs of Plaintiffs on January 7, 2022. Parrish Decl. at ¶ 11; Ex. F to
14 Parrish Decl. (docket no. 20-6); Ex. G to Parrish Decl. (docket no. 20-7).

15 Plaintiffs submitted to Allstate estimates and bids from contractors to repair the
16 house, garage, shop, outbuildings, and fixtures. Parrish Decl. at ¶ 10; Ex. E to Parrish
17 Decl. (docket no. 20-5). Plaintiffs sought insurance coverage for roughly \$200,000 in
18 damages to the dwelling and structures, which included the cost to replace various
19 appliances, and an additional \$1,310 for the value of other stolen personal property,
20 including certain tools and clothing. Interrogatory No. 15, Ex. B to Case Decl. (docket
21 no. 19-2 at 5–6).

22 On February 10, 2022, Allstate denied Plaintiffs’ insurance claim. Letter by Rory
23 Leid, Ex. H to Parrish Decl. (docket no. 20-8). Allstate’s denial letter focused only on

1 whether coverage was owed for the dwelling and other structures and did not cite to the
2 Policy provisions that discuss personal property. Id. With respect to the dwelling and
3 other structures, Allstate asserted that the Policy’s vandalism exclusion applied because
4 the Property was vacant for more than 30 consecutive days before the loss. Id.; see also
5 Def.’s Mot. at 7 (docket no. 18). Allstate, however, offered no basis for denying
6 coverage as to any personal property, which Allstate now concedes includes stand-alone
7 appliances such as the washer, dryer, microwave, and refrigerator.² Def.’s Mot. at 5 n.4
8 (docket no. 18).

9 In August 2022, Plaintiffs initiated this lawsuit, and they now assert claims for
10 breach of contract, violation of Washington’s Consumer Protection Act (“CPA”),
11 insurance bad faith, negligence, and violation of Washington’s Insurance Fair Conduct
12 Act (“IFCA”). See Compl. (docket no. 1); Am. Compl. at ¶¶ 21–25 (docket no. 16).
13 Allstate moves for partial summary judgment, asking the Court to rule that coverage is
14 not owed for the approximately \$200,000 required to repair the dwelling and structures
15 and to replace certain “fixtures, utilities, appurtenances, systems, and furnishings,” as
16 well as various appliances. See Def.’s Mot. at 2 (docket no. 18). Plaintiffs cross-move
17 for partial summary judgment, seeking findings that, as a matter of law, their dwelling
18 and structure losses are covered, Allstate breached the Policy in denying coverage, and
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22 ² The Court concludes that the term “stand-alone appliance” also encompasses Plaintiffs’ toaster and
23 coffee maker. See Ex. Q to Bonrud Decl. (docket no. 22-17).

Allstate breached various provisions of the Washington Administrative Code (“WAC”).
See Pls.’ Mot. at 3 (docket no. 28).

Discussion

A. Summary Judgment Standard

The Court shall grant summary judgment if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A fact is material if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). To survive a motion for summary judgment, the adverse party must present affirmative evidence, which “is to be believed” and from which all “justifiable inferences” are to be favorably drawn. Id. at 255, 257. When the record, taken as a whole, could not, however, lead a rational trier of fact to find for the non-moving party on matters as to which such party will bear the burden of proof at trial, summary judgment is warranted. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see also Celotex, 477 U.S. at 322. “On cross motions for summary judgment, the Court evaluates the motions separately, ‘giving the nonmoving party in each instance the benefit of all reasonable inferences.’” Eagle W. Ins. Co. v. SAT, 2400, LLC, 187 F. Supp. 3d 1231, 1235 (W.D. Wash. 2016) (citation omitted).

B. Interpretation of an Insurance Policy

The parties agree that Washington law governs interpretation of the Policy. Def.’s Mot. at 8–9 (docket no. 18); Pls.’ Mot. at 10 (docket no. 28). Under Washington law,

1 “[i]nterpretation of insurance policies is a question of law, in which the policy is
2 construed as a whole and each clause is given force and effect.” Overton v. Consol Ins.
3 Co., 145 Wn.2d 417, 424, 38 P.3d 322 (2002) (citation omitted). “Insurance policies are
4 construed as contracts, so policy terms are interpreted according to basic contract
5 principles.” Allemand v. State Farm Ins. Companies, 160 Wn. App. 365, 368, 248 P.3d
6 111 (2011) (citation omitted). The insurance policy “should be given a fair, reasonable,
7 and sensible construction as would be given to the contract by the average person
8 purchasing insurance.” Grange Ins. Co. v. Brosseau, 113 Wn.2d 91, 95 776 P.2d 123
9 (1989) (citation omitted). “If the language is clear, the court must enforce the policy as
10 written and may not create ambiguity where none exists.” Allemand, 160 Wn. App. at
11 368, 248 P.3d 111 (citation omitted). “A clause is only considered ambiguous if it is
12 susceptible to two or more reasonable interpretations.” Id. “If an ambiguity exists, the
13 clause is construed in favor of the insured.” Id. The expectations of the insured,
14 however, cannot override the plain language of the contract. Id.

15 **C. Policy Coverage**

16 “Coverage under insurance policies, particularly all-risk policies, is interpreted
17 broadly.” Eagle, 187 F. Supp. 3d at 1235 (citation omitted). “When determining
18 coverage, the initial burden of proof is on the insured to show that a loss falls within the
19 terms of the policy.” Id. (citation omitted). “The burden then shifts to the insurer to
20 prove that the loss is not covered because of exclusionary provisions within the policy.”
21 Id. The Court addresses whether (1) Plaintiffs have demonstrated that their loss falls
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1 within the terms of the Policy, and (2) Allstate has established that Plaintiffs' loss is not
2 covered because of the Policy's vandalism exclusion.

3 **1. Nature of Plaintiffs' Loss**

4 Allstate contends that "Plaintiffs have not carried and cannot carry their burden of
5 establishing that the loss was theft and therefore potentially covered under the Policy."³
6 Def.'s Mot. at 9–11 (docket no. 18). Allstate's argument lacks merit. The Policy covers
7 "sudden and accidental direct physical loss to the property described in Dwelling
8 Protection–Coverage A and Other Structures Protection–Coverage B except as limited or
9 excluded." Ex. A to Bonrud Decl. at 7 (docket no. 22-1 at 18). Allstate does not dispute
10 that the loss at issue was sudden and accidental direct physical loss or that the Property
11 and detached garage, carport, barn, and sheds are the dwelling and structures covered
12 under the Policy. Thus, Plaintiffs' loss is potentially covered under the insuring ("Losses
13 We Cover") provision of the Policy. Whether Plaintiffs' loss should be characterized as
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17 ³ In a footnote, Allstate maintains that "[e]ven if the loss is considered, in whole or in part, theft instead of
18 vandalism, the loss is still excluded from coverage. The Policy states that if a loss is caused by 'any
19 substantial change or increase in hazard, if changed or increased by any means within the control or
20 knowledge of an insured person', the loss is not covered." Def.'s Mot. at 9 n.5 (docket no. 18).
21 According to Allstate, "Plaintiffs bought a house in rural Mount Vernon and left it vacant, unoccupied,
22 and largely unattended without adequate security for nearly four months, just beckoning vandals to break-
23 in, destroy the house, and take away anything of value. Plaintiffs' inaction substantially changed and
increased the risk of loss to the Property, was the cause of the loss, and they certainly had the means and
control to prevent the loss by either moving into and living at the Property, having a tenant live there until
they moved, and/or providing adequate security." *Id.* This argument, however, addresses only whether
an exclusionary provision would preclude coverage rather than whether Plaintiffs' loss falls within the
terms of the Policy. Because Allstate "did not move for summary judgment on that exclusion because its
application is plainly an issue of fact," Def.'s Resp. at 17 (docket no. 31), the Court does not further
address the subject.

1 theft or vandalism is more appropriately analyzed under step two, in connection with the
2 exclusion that Allstate bears the burden of proving is applicable.

3 **2. Exclusion for Vandalism**

4 Allstate has invoked the vandalism exclusion only with respect to the dwelling and
5 other structures themselves, and not as to any personal property contained within those
6 buildings, including various appliances.⁴ Allstate argues that the damage to “fixtures,
7 utilities, appurtenances, systems, and furnishings” in or attached to the dwelling and other
8 structures resulted from vandalism, not theft, and it is not covered because “the property
9 was vacant or unoccupied for more than 30 consecutive days immediately before the
10 loss.” Def.’s Mot. at 11 (docket no. 18) (citing Ex. A to Parrish Decl. at 14–16 (docket
11 no. 20-1)). Plaintiffs do not dispute that the Property was vacant or unoccupied for more
12 than 30 consecutive days before their loss. Pls.’ Resp. (docket no. 23); Pls.’ Mot. (docket
13 no. 28). Thus, the question before the Court is whether the event that “(a) directly and
14 solely result[ed] in loss; or (b) initiate[d] a sequence of events that result[ed] in loss,
15 regardless of the nature of the intermediate or final event in that sequence,” Ex. A to
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19 ⁴ Plaintiffs seek coverage as to their personal property losses. See Pls.’ Mot. at 16–17 (docket no. 28). In
20 its denial letter, Allstate did not cite to any provision that applies to personal property. See Ex. H to
21 Parrish Decl. (docket no. 20-8). Washington law “preclude[s] insurers from introducing new or changed
22 bases for denying insurance coverage once litigation has begun.” Karpenski v. Am. Gen. Life Cos., 999
23 F. Supp. 2d 1235, 1245 (W.D. Wash. 2014). Allstate’s inclusion of a “reservation of rights” in its denial
letter does not allow it at this juncture to add additional reasons for denying coverage. See id. at 1245–46.
Thus, Allstate cannot deny coverage for Plaintiffs’ personal property losses, and the Court concludes, as a
matter of law, that the theft of Plaintiffs’ stand-alone appliances and personal effects is a covered loss
under the Policy. Plaintiffs’ cross-motion for summary judgment is GRANTED as to personal property.

1 Bonrud Decl. (docket no. 22-1 at 18), was theft (which is covered under the Policy) or
2 vandalism (which is not).

3 **i. Definitions**

4 The Policy does not define either theft or vandalism. “Undefined terms are given
5 their ‘plain, ordinary, and popular’ meaning.” Am. States Ins. Co. v. Ranch San Marcos
6 Properties, LLC, 123 Wn. App. 205, 210, 97 P.3d 775 (2004) (citation omitted). Allstate
7 maintains that the parties agree on the definitions of theft and vandalism, see Def.’s
8 Reply at 7 (docket no. 24), but Allstate’s definition of theft, which requires that the stolen
9 items be “unattached to the realty,” is limited to personal property, see id. at 5–6, and
10 Plaintiffs do not similarly restrict their understanding of theft. Plaintiffs offer the
11 following definitions of theft: (1) “the act of stealing” or “an unlawful taking (as
12 embezzlement or burglary) of property”; (2) the “felonious taking and removing of
13 another’s personal property with the intent of depriving the true owner of it; larceny” or
14 “any act or instance of stealing, including larceny, burglary, embezzlement, and false
15 pretenses”; and (3) “to wrongfully obtain or exert unauthorized control over the property
16 or services of another or the value thereof, with intent to deprive him or her of such
17 property or services.” Pls.’ Mot. at 11–12 (docket no. 28) (quoting Merriam-Webster
18 Online Dictionary, Black’s Law Dictionary, and RCW 9A.56.020(1)(a)).

19 Allstate argues that “[t]he severance and destruction of fixtures cannot, by
20 definition, be theft.” Def.’s Reply at 5–6 (docket no. 24) (citing Benson Holding Corp. v.
21 N.Y. Prop. Ins. Underwriting Ass’n, 124 Misc. 2d 955, 955–56, 478 N.Y.S.2d 570 (N.Y.
22 Civ. Ct. 1984), and Acorn Inv. Co. v. Mich. Basic Prop. Ins. Ass’n, No. 284234, 2009
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1 WL 2952677, at *2 (Mich. Ct. App. Sep. 15, 2009)). Neither of the authorities cited by
 2 Allstate are binding or involve Washington law, and the latter opinion is unpublished.
 3 Moreover, Benson and Acorn involve the reverse of the situation in this case; in both
 4 cases, vandalism was a covered peril, but theft was not.⁵ Benson and Acorn concerned
 5 commercial or rental properties as to which the insureds had different expectations than
 6 an ordinary purchaser of a homeowner's policy, which is generally understood to insure
 7 against theft of items from the home.⁶ See Am. States, 123 Wn. App. at 210

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 9 ⁵ In Benson, perpetrators broke into the plaintiff's building, severed wires leading to an elevator control
 10 panel, and removed the elevator control panel. 124 Misc. 2d at 955–56. The Civil Court of the City of
 New York concluded that the plaintiff's loss was not subject to the theft exclusion, observing that

11 it would seem that any forceful or violent severing and removal of property that had been
 12 affixed to the premises constitutes vandalism and the loss of the property thus removed is
 13 not excluded as pilferage, theft, etc. It is of course philosophically arguable that, where
 14 the destruction to the freehold is relatively minor and the gravamen of the loss is the value
 of the removed equipment, what is involved is essentially theft and not vandalism.
 However, it could be argued with equal force that the exclusion would be generally
 understood by a lay person purchasing this type of policy to refer only to property that is
 not attached to the freehold. (A much closer case would be presented had the control panel
 been extracted simply by removing some screws.)

15 Id. at 956–57. In Acorn, the Michigan Court of Appeals held that the perpetrators' acts of breaking
 16 plumbing fixtures, a water meter, and a water supply line, leaving no way to stop water from flowing, was
 17 vandalism within the meaning of the policy. The Acorn Court noted that the evidence showing those
 items were also stolen was not material because the claim at issue was "for property damage caused by
 the removal of the items," and not for the stolen items themselves. 2009 WL 2952677, at *2. Contrary to
 Allstate's contention, neither Benson nor Acorn stand for the proposition that severance and removal of a
 fixture cannot be considered theft.

18 ⁶ Like Allstate, Plaintiffs have cited decisions involving commercial property insurance. See Certain
 19 Underwriters at Lloyds, London v. Law, 570 F.3d 574 (5th Cir. 2009) (concluding that damage to air-
 20 conditioning units was within the theft exclusion and not covered because the damage was done solely in
 furtherance of stealing copper); see also Smith v. Shelby Ins. Co. of Shelby Ins. Grp., 936 S.W.2d 261
 21 (Tenn. Ct. App. 1996) (same). In Law, the Fifth Circuit applied Texas law and "discern[ed] no possibility
 that the parties intended to extend the theft [exclusion]'s coverage of damage incidentally caused by
 22 burglars while entering or leaving the building to include damage caused by rooftop (exterior) thieves to
 freestanding air-conditioning units." 570 F.3d at 578. In Smith, the Tennessee Court of Appeals
 similarly focused on the intent of the insurer and the insured, finding "significant" the policy language
 23 excluding damage "[c]aused by or resulting from theft." 936 S.W.2d at 265. The Smith Court concluded

(Washington courts read insurance contracts “in a fair, reasonable, and sensible manner as it would be understood by the average person, giving effect to each provision of the policy”). The Policy in this case offered Plaintiffs no reason to doubt that items affixed to the Property would be covered if stolen. Indeed, the Policy explicitly covers theft of “wall to wall carpeting fastened to” the Property unless an exclusion applies. Ex. A to Parrish Decl. (docket no. 20-1 at 14). Thus, the Court rejects Allstate’s theory that the removal of items affixed to the Property cannot be theft.

ii. Characterization of Loss

Having concluded that the theft of “fixtures, utilities, appurtenances, systems, and furnishings” is a factual and legal possibility, the Court turns to the question of whether particular items at issue in this matter were stolen or vandalized.

Although the authorities cited by the parties concern commercial properties, rather than residences, relate to policies that exclude theft, as opposed to vandalism, and reach varying results, the courts involved generally applied the same analysis, i.e., determining whether the loss at issue was caused by theft or vandalism by examining the purpose of the criminal behavior -- to steal something or just to destroy it. See Law, 570 F.3d at 578–79; Smith, 936 S.W.2d 265–66; see also Mercedes Zee Corp. LLC v. Seneca Ins. Co., 151 F. Supp. 3d 255, 260 (D. Conn. 2015) (denying both parties’ motions for summary judgment, reasoning that the wrongdoer’s initial purpose when entering the

that this wording precluded coverage for the ripping out of electric wiring, plumbing pipes, and condenser coils, the purpose of which was to steal copper components from an air-condition system. Id. Law and Smith are as distinguishable as Allstate’s authorities, Benson and Acorn.

1 building was not dispositive and that “[w]hat is required is an *item-by-item* consideration
2 of the property that has been lost or damaged to determine if specific loss or damage is
3 the result of an act of vandalism (covered) or an act of theft (not covered)”).

4 In this case, the before-and-after photographs of the Property demonstrate that the
5 “fixtures, utilities, appurtenances, systems, and furnishings” were stolen, not vandalized.
6 Compare Ex. J to Bonrud Decl. (docket no. 22-10), with Ex. C to Parrish Decl. (docket
7 no. 20-3). The cabinets, sinks, wood flooring, and carpet are now missing from the
8 Property, and the purpose of the damage done to the interior of the Property was to
9 effectuate the theft, and not to willfully or maliciously destroy or deface the walls, floors,
10 and the like, which would be vandalism. See Def.’s Mot. at 12 (docket no. 18); Pls.’
11 Mot. at 11 (docket no. 28). Thus, the Court concludes, as a matter of law, that Allstate
12 may not rely on the vandalism exclusion to deny coverage as to Plaintiffs’ losses
13 resulting from theft of “fixtures, utilities, appurtenances, systems, and furnishings.”

14 **3. Exclusion for Increased Risk**

15 In its denial letter, Allstate also cited to the increased risk of loss provision, which
16 precludes coverage when loss is caused by “[a]ny substantial change or increase in
17 hazard, if changed or increased by any means within the control or knowledge of an
18 insured person.” Letter by Rory Leid, Ex. H to Parrish Decl. (docket no. 20-8).

19 According to Allstate, Plaintiffs’ decision to leave the Property vacant for several months
20 increased the risk of loss, and Plaintiffs’ loss would not have occurred if Plaintiffs were
21 living at the Property. Def.’s Resp. at 17–19 (docket no. 31). In seeking summary
22 judgment on the issue, Plaintiffs argue that the increased risk exclusion does not apply
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1 because (1) the Property “was unoccupied at the time of the purchase and remained so
2 until the date of loss”; (2) the increased risk of loss provision was not a basis for denial;
3 and (3) Allstate cannot “show that the alleged substantial change or increase in hazard
4 caused the loss.” Pls.’ Mot. at 25–26 (docket no. 28) (emphasis omitted). Plaintiffs’
5 second assertion lacks merit because Allstate did cite the increased risk of loss provision
6 in its denial letter, and Allstate will be permitted to assert that provision as a defense to
7 coverage. Letter by Rory Leid, Ex. H to Parrish Decl. (docket no. 20-8). As to Plaintiffs’
8 first and third contentions, the Court also agrees with Allstate that genuine disputes of
9 material fact preclude summary judgment, and Plaintiffs’ cross-motion seeking to bar
10 Allstate from asserting the increased risk of loss exclusion is DENIED.⁷

11 **Conclusion**

12 For the foregoing reasons, the Court ORDERS:

13 (1) Allstate’s motion for partial summary judgment, docket no. 18, is DENIED.

14 (2) Plaintiffs’ cross-motion, docket no. 28, is GRANTED in part and DENIED
15 in part, as follows:

16 (a) The Court concludes, as a matter of law, that (i) Allstate failed to
17 timely and appropriately deny coverage for Plaintiffs’ personal property losses,
18 and thus, it may not do so in this litigation; (ii) Plaintiffs’ stand-alone appliances
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20 ⁷ Because factual questions preclude any decision regarding coverage as to losses relating to “fixtures,
21 utilities, appurtenances, systems, and furnishings,” the Court cannot decide, as a matter of law, whether
22 Allstate breached the Policy or any WAC provisions. As to Plaintiffs’ related claims, their motion for
23 summary judgment is DENIED.

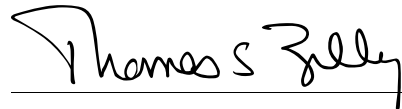
1 and personal effects are personal property; and (iii) the theft of Plaintiffs' stand-
2 alone appliances and personal effects is a covered loss under the Policy.

3 (b) The Court concludes, as a matter of law, that Allstate may not rely
4 on the vandalism exclusion in the Policy to deny coverage as to Plaintiffs' losses
5 resulting from theft of "fixtures, utilities, appurtenances, systems, and
6 furnishings."

7 (c) Plaintiffs' cross-motion for partial summary judgment is otherwise
8 DENIED.

9 (3) The Clerk is directed to send a copy of this Order to all counsel of record.
10 IT IS SO ORDERED.

11 Dated this 28th day of December, 2023.

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14 Thomas S. Zilly
15 United States District Judge
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